

DEPARTMENT OF FISH AND GAME

Eastern Sierra-Inland Deserts - Region 6

Bishop Field Office

Habitat Conservation Program

407 West Line Street

Bishop, California 93514

(760) 872-1171



November 20, 2002

Mr. Goodyear K. Walker  
State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825

Re: Notice of Intent/Preparation (NOP) to Prepare a Joint Environmental Impact  
Report/Environmental Assessment (EIR/EA) for the Proposed El Paso Line No.  
1930 Pipeline Conversion Project SCH # 2002101069

Dear Mr. Walker:

The Department of Fish and Game (Department) has reviewed the NOP SCH # 2002101069 for the above mentioned project. El Paso proposes to convert just over 303 miles of existing 30" pipe from crude oil transport to natural gas transport. The proposed activities include relocation of approximately 3,400 feet of pipeline at three fault crossings, three pipeline tie-ins, removal of 9 mainline valves, 11 vent valves and 5 pig signals, the installation of 19 new valves, and the inspection and rewinding of worn or pitted pipe wrap. El Paso will also hydrostatically test the pipeline in segments prior to operations. The pipeline extends just over 303 miles from Ehrenberg, Arizona across the Colorado River, part of Riverside County and San Bernardino County to Daggett, into Kern County and terminates at Emidio, California.

The Department is responding as a Trustee Agency for fish and wildlife resources (Fish and Game Code sections 711.7 and 1802 and CEQA Guidelines section 15386) and a Responsible Agency regarding any discretionary actions (CEQA Guidelines section 15381) required by the Department.

General Comments

To enable Department staff to adequately review and comment on the proposed project, we suggest that updated biological studies be conducted prior to any environmental or discretionary approvals. The following information should be included in the DEIR:

1. A complete assessment of the flora and fauna within and adjacent to the project area, with particular emphasis upon identifying endangered, threatened, and sensitive species and sensitive habitats.
  - a. Conduct an updated (within the last 1 year) general biological study of the site to determine if any of the above-mentioned species or habitats may be potentially impacted by the proposed project.
  - b. If appropriate habitat for any listed species occurs on the site, including surface waters potentially containing any fish species, have a qualified biologist conduct focused surveys<sup>9</sup> according to U.S. Fish and Wildlife Service (USFWS) and/or Department protocol.
  - c. Have a qualified botanist conduct a focused rare plant survey during the appropriate time of year following USFWS and/or Department protocols.
  - d. Have a qualified biologist conduct focused surveys for burrowing owl following the 1993 Burrowing Owl Consortium protocol guidelines. Survey protocols can be obtained from the Department. If occupied burrows are found at the project site, the following measures should be included as mitigation measures in the DEIR:
    - (1) Occupied burrows should not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the Department verifies through non-invasive methods that either: (a) the adult birds have not begun egg-laying and incubation; or (b) the juveniles from the occupied burrows are foraging independently and are capable of independent survival. If a biologist is unable to verify one of the above conditions, then no disturbance shall occur within 300 feet of the burrowing owls nest during the breeding season to avoid abandonment of the young.
    - (2) If destruction of occupied burrows is unavoidable, and if owls are not nesting, the project proponent can implement a one-way door exclusion method according to Department protocols, then collapse their burrow. As mitigation for the permanent impact to burrowing owl foraging and burrow habitat at the project site, the applicant should acquire and permanently protect a minimum of 6.5 acres of foraging habitat per pair or unpaired resident bird impacted by the project.
  - e. If any listed species will potentially be impacted by the proposed project, consultation with the Department and the USFWS will be required to

A complete assessment of the flora and fauna within and adjacent to the Project area emphasizing identification of endangered, threatened, and sensitive species and sensitive habitats is included in *Biological Resources* (Section 4.2).

establish appropriate avoidance, minimization, and mitigation measures. An incidental take permit may be required pursuant to Fish and Game Code Section 2080 *et seq* and/or Section 7 or 10 of the Federal ESA.

- f. The Department requests that impacts to State- and Federally-listed species and potential avoidance, alternative and mitigation measures be addressed in the CEQA document and not solely in subsequent negotiations between the applicant and the agencies.
2. A thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts.
  - a. CEQA Guidelines, Section 15125(a), directs that knowledge of the regional setting is critical to an assessment of environmental impacts and that special emphasis should be placed on resources that are rare or unique to the region.
  - b. Project impacts should be analyzed relative to their effects on off-site habitats. Specifically, this should include nearby public lands, open space, adjacent natural habitats, and riparian ecosystems. Impacts to and maintenance of wildlife corridor/movement areas, including access to undisturbed habitat in adjacent areas, should be fully evaluated and provided. This includes impacts to wildlife from increased raven populations.
  - c. The zoning of areas for development projects or other uses that are nearby or adjacent to natural areas may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the environmental document.
  - d. A cumulative effects analysis should be developed as described under CEQA Guidelines, Section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
3. A range of alternatives should be analyzed to ensure that alternatives to the proposed project are fully considered and evaluated. A range of alternatives which avoid or otherwise minimize impacts to sensitive biological resources should be included. Specific alternative locations should also be evaluated in areas with lower resource sensitivity where appropriate.

A discussion of direct, indirect, and cumulative impacts for biological resources is included in *the Impact Analysis and Mitigation for Biological Resources* (Section 4.2.6)

Alternatives to the Project are discussed in Section 3.0 and particular attention to biological resources as related to the various alternatives is discussed in the *Alternatives* section of *Biological Resources* (Section 4.2.6).

- a. Mitigation measures for project impacts to sensitive plants, animals, and habitats should emphasize evaluation and selection of alternatives which avoid or otherwise minimize project impacts. Off-site compensation for unavoidable impacts through acquisition and protection of high-quality habitat elsewhere should be addressed.
  - b. The Department considers Rare Natural Communities as threatened habitats having both regional and local significance. Thus, these communities should be fully avoided and otherwise protected from project-related impacts.
4. A California Endangered Species Act (CESA) Permit must be obtained if the project has the potential to result in "take" of species of plants or animals listed under CESA, either during construction or over the life of the project. CESA Permits are issued to conserve, protect, enhance, and restore State-listed threatened or endangered species and their habitats. Early consultation is encouraged, as significant modification to the proposed project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, require that the Department issue a separate CEQA document for the issuance of a CESA permit unless the project CEQA document addresses all project impacts to listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of a CESA permit. For these reasons, the following information is requested:
- a. Biological mitigation monitoring and reporting proposals, and a raven control plan should be of sufficient detail and resolution to satisfy the requirements for a CESA Permit. The Department recommends early consultation with the Department to discuss appropriate measures to avoid, minimize, and/or compensate for impacts.
  - b. A Department-approved Mitigation Agreement and Mitigation Plan are required for plants listed as rare under the Native Plant Protection Act.
5. The Department opposes the elimination of watercourses and/or their channelization or conversion to subsurface drains. All wetlands and watercourses, whether intermittent or perennial, must be retained and provided with substantial setbacks which preserve the riparian and aquatic values and maintain their value to on-site and off-site wildlife populations.
- a. Under Section 1600 et seq of the Fish and Game Code, the Department requires the project applicant to notify the Department of any activity that will divert, obstruct or change the natural flow or the bed, channel, or bank

Biological permit requirements are discussed in *the Regulatory Setting* section of *Biological Resources* (Section 4.2.2)

A mitigation monitoring plan which includes the proposed mitigation measures is included as Section 6.0.

This comment is addressed in the *Regulatory Setting* section of *Hydrology and Water Quality* (Section 4.5.2)



(which includes associated riparian habitat) of a river, stream or lake, or use material from a streambed prior to the applicant's commencement of the activity. Streams include, but are not limited to, intermittent and ephemeral streams, rivers, creeks, dry washes, sloughs, blue-line streams, and watercourses with subsurface flow. The Department's issuance of a Streambed Alteration Agreement for a project that is subject to CEQA will require CEQA compliance actions by the Department as a responsible agency. The Department, as a responsible agency under CEQA, may consider the local jurisdiction's (lead agency) Negative Declaration or EIR for the project. However, if the EIR does not fully identify potential impacts to lakes, streams, and associated resources (including, but not limited to, riparian and alluvial fan sage scrub habitat) and provide adequate avoidance, mitigation, monitoring and reporting commitments, additional CEQA documentation will be required prior to execution (signing) of the Streambed Alteration Agreement. In order to avoid delays or repetition of the CEQA process, potential impacts to a lake or stream, as well as avoidance and mitigation measures need to be discussed within this CEQA document. The Department recommends the following measures to avoid subsequent CEQA documentation and project delays:

- (1) Incorporate all information regarding impacts to lakes, streams and associated habitat within the DEIR. Information that should be included within this document includes: (a) a delineation of lakes, streams, and associated habitat that will be directly or indirectly impacted by the proposed project; (b) details on the biological resources (flora and fauna) associated with the lakes and/or streams; (c) identification of the presence or absence of sensitive plants, animals, or natural communities; (d) a discussion of environmental alternatives; (e) a discussion of avoidance measures to reduce project impacts; and (f) a discussion of potential mitigation measures required to reduce the project impacts to a level of insignificance. The applicant and lead agency should keep in mind that the State also has a policy of no net loss of wetlands.
- (2) Include in the DEIR a discussion of potential adverse impacts from any increased runoff, sedimentation, soil erosion, and/or urban pollutants on streams and watercourses on or near the project site, with mitigation measures proposed to alleviate such impacts must be included.
- (3) The Department recommends that the project applicant and/or lead agency consult with the Department to discuss potential project

This comment is addressed in the *Impact Analysis and Mitigation* section of *Biological Resources* (Section 4.2.4)

Potential impacts from increased runoff, sedimentation, soil erosion, etc. is addressed in the *Impacts Analysis and Mitigation* section of *Hydrology and Water Quality* (Section 4.5.4)

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impacts and avoidance and mitigation measures. Early consultation with the Department is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources.

#### Specific Comments

Vegetation Communities: Please delineate vegetation communities (acreage and distribution) within and adjacent to proposed project site(s) to the finest spatial scale possible and classify those communities according to Sawyer & Keeler-Wolf (1995).

Potential direct and indirect effects to raptors and songbirds would be locally and regionally significant. The Department recommends detailed focused surveys be required so that an adequate evaluation of project impacts can be made. Upon completion of the focused survey appropriate mitigation measures can be developed to ensure the long term protection of vital habitats for the sensitive species occurring on the site. Mitigation measures may require avoidance of particularly sensitive habitats and, therefore, require a redesign of the project. Please survey and prepare an impact analysis for, but not limited to, the following special status species:

1. Mammals: Mohave ground squirrel, San Joaquin kit fox, California leaf-nosed bat, cave myotis, Pale big-eared bat, Pallid bat, Western mastiff bat.
2. Birds: Gila woodpecker, gilded flicker, crissal thrasher, Leconte's thrasher, mountain plover, western burrowing owl, elf owl, vermilion flycatcher, brown-crested flycatcher, Loggerhead shrike, Sonoran yellow warbler.
3. Amphibians/Reptiles: desert tortoise, flat-tailed horned lizard, Colorado Desert fringe-toed, Mojave fringe-toed lizard, couch's spade-foot toad, blunt-nose leopard lizard, Tehachapi slender salamander, and diamondback rattlesnake.
4. Plants: Please coordinate with the Department prior to conducting botanical surveys.

Please evaluate direct and indirect effects of the project to desert mule deer and Nelson's bighorn sheep.

The Department is unable to authorize incidental take of "fully protected" species (Fish and Game Code Sections 3511, 4700, 5050, and 5515) when activities are proposed in areas inhabited by those species. In addition, Fish and Game Code Section 3513 prohibits any take or possession of birds that are designated by the

These comment in addressed in the *Impact Analysis and Mitigation* section of *Biological Resources* (Section 4.2.4)

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Migratory Bird Treaty Act (MBTA) as migratory nongame birds except as allowed by federal rules and regulations promulgated pursuant to the MBTA. The Department is similarly unable to authorize the incidental take of five types of birds listed under Fish and Game Code 3505, or the incidental take of unlisted raptors or the destruction of their nests or eggs (Fish and Game Code Section 3503.5). Early consultation with the Department is strongly suggested in developing appropriate minimization and avoidance measures, for example, conducting construction activities outside the bird breeding season, to ensure avoidance of direct and indirect effects to species protected under these statutes.

Agricultural, grassland, Sonoran creosote bush scrub, desert wash woodlands, and wetland habitats are of seasonal importance to several species of raptors. Special Status Species of raptors may be observed during both the spring and winter months. Wintering raptors migrate from their breeding grounds in the northern latitudes to southern California and beyond. These habitat communities provide important, if not vital, staging and wintering habitats. Other annual resident raptors may forage or nest in these habitats. Please conduct an impact analysis on both resident and migratory raptors resulting from effects of the project. In particular, telephone/transmission line poles are readily used as nesting sites by a variety of raptors and construction activities within 250 meters of occupied nesting sites should be avoided.

Locations and impacts to habitats from hydrostatic testing should be included.

Thank you for this opportunity to comment. The requested biological survey information should be submitted to Ms. Rebecca Jones, Environmental Scientist III, 36431 41<sup>st</sup> St. E., Palmdale CA 93552 for review in order to adequately determine the potential impacts of the project. Questions regarding this letter and further coordination on these issues should also be directed to Ms. Jones at the above address, or telephone (661) 285-5867.

Sincerely,

  
Darrell Wong, Supervisor  
Habitat Conservation Program

cc: Ms. Rebecca Jones, CDFG Region 6  
Mr. Arturo Delgado, CDFG Region 6  
Ms. Annette Tenneboe, CDFG Region 4

Comments on special status species of raptors are addressed in the *Impact Analysis and Mitigation* section of *Biological Resources* (Section 4.2.4).

Hydrostatic testing impacts are discussed in the *Impact Analysis and Mitigation* section of *Biological Resources* (Section 4.2.4).

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Ms. Kim Nicol, CDFG Region 6  
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